

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



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Court of Appeals, District of Columbia

JANUARY TERM, 1903.

No. 1274.

201

No. 3, SPECIAL CALENDAR.

STILSON HUTCHINS, APPELLANT.

VS.

CHARLES A. MUNN, CARRIE L. MUNN, JAMES G. HILL,  
AND WILLIAM P. LIPSCOMB.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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FILED JANUARY 17, 1903.



# COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

~~APRIL~~  
~~JANUARY~~ TERM, 1903.

No. 1274.

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*vs.*

CHARLES A. MUNN, CARRIE L. MUNN, JAMES G. HILL,  
AND WILLIAM P. LIPSCOMB.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Court of Appeals of the District of Columbia.

STILSON HUTCHINS, Appellant, }  
*vs.* } No. 1274.  
 CHARLES A. MUNN ET AL. }

*a* Supreme Court of the District of Columbia.

STILSON HUTCHINS, Complainant, }  
*vs.* }  
 CHARLES A. MUNN, CARRIE L. MUNN, } No. 23468. In Equity.  
 James G. Hill, and William P. Lips- }  
 comb, Defendants. }

UNITED STATES OF AMERICA, } ss :  
*District of Columbia,*

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

**1** *Order for Allowance of Special Appeal.*

Filed December 31, 1902.

Court of Appeals of the District of Columbia, October Term, 1902.

STILSON HUTCHINS, Petitioner, } No. 134, Original Docket.  
 vs. } Equity. No. 23468.  
 CHARLES A. MUNN ET AL. }

On consideration of the petition of Stilson Hutchins, for the allowance of a special appeal from an order of the supreme court of the District of Columbia, entered herein on the 25th day of November, A. D. 1902, it is now here ordered by the court, that said appeal be, and the same is hereby allowed.

December 17th, 1902.

**M. F. MORRIS,**  
**SETH SHEPARD,**  
*Associate Justices.*

A true copy.

**Test :**

[SEAL.]

1-1274A

ROBERT WILLETT, *Clerk.*

*Order for Record.*

Filed December 31, 1902.

In the Supreme Court of the District of Columbia.

HUTCHINS	}	At Law. No. 23468. Eq.
vs.		
MUNN.		

The clerk of said court will please prepare record for Court of Appeals:

Bill and exhibits.

Injunction.

Answer of def'ts Munn & wife & exhibit.

Discharge of rule, motions filed.

Order of reference by Anderson, J.

Replication.

Discharge of rule and dissolution of injunction.

Vacation of above & order.

Stipulation & exhibits referred — therein.

BRANDENBURG & BRANDENBURG,  
*Solicitors for Compl't.*

O. K.

SAM'L MADDUX,  
H. PRESCOTT GATLEY,  
*Sol'rs for Def'ts.*

*Stipulation.*

Filed December 31, 1902.

HUTCHINS	}	No. 23468. Equity.
vs.		
MUNN.		

It is stipulated and agreed between counsel for the plaintiff and for defendants, Hill and Lipscomb, that the answer of the latter was substantially the same as that of defendants, Munn, and that said answer properly pleaded and set up the following instruments in writing:

1. A copy, designated "Defendants' Exhibit H. & L. No. 1," being copy of permit under which the plaintiff built the house he now occupies and has described in his bill.

2. Copy of deed from William Windom and wife (designated "Defendants' Exhibit H. & L. No. 2,") duly executed and conveying to defendant, Carrie L. Munn, in fee-simple absolute, subplot 141 square 181 in the city of Washington, being the lot upon part of which

was being erected the building against which an injunction was prayed.

3. Also plat of proposed addition to defendants Munns' dwelling, marked "Defendants' Exhibit H. & L. No. 3," which shows to what extent a party wall was erected by the plaintiff along the division line of the two lots when he built his house No. 1603 Mass. Ave.

Said answer also disclosed that the erection of the proposed structure on the Munn lot was begun on the 10th day of July, A. D. 1902.

BRANDENBURG & BRANDENBURG,

*Solicitors for Compl't.*

H. PRESCOTT GATLEY,

*Solicitor for Defendants Hill & Lipscomb.*

*Bill for Injunction.*

Filed August 14, 1902.

In the Supreme Court of the District of Columbia, Holding a Court in Equity.

STILSON HUTCHINS, Complainant,

*vs.*

CHARLES A. MUNN, CARRIE L. MUNN, } No. 23468. Equity.  
James G. Hill, William P. Lipscomb, }  
Defendants.

The complainant respectfully states :

1. That he is a citizen of the United States and a resident of the city of Washington and District of Columbia, and brings this suit in his own right.

2. That the defendants are citizens of the United States and residents of the District of Columbia; the defendant- Charles A. Munn and Carrie L. Munn are sued in their own right, and the defendant James G. Hill as the architect, and William P. Lipscomb as the builder of the addition hereinafter referred to, and are sued in that capacity.

3. That on or about the month of August, 1882, the complainant became possessed of and was seized in fee-simple of the following-described property: Lots sub. No. 142 and part of sub-lot No. 4, in square No. 181, in the city of Washington, and District of Columbia, together with all and singular the ways, passages, easements, rents, issues, profits and appurtenances thereunto belonging, and still continues to possess the same.

4. That subsequent to the purchase of said property and about twenty years since, the complainant at great cost erected thereon a dwelling pursuant to a permit issued by the building inspector of the District of Columbia and upon the faith and in accordance with the building regulations as prescribed by the Commissioners of the

said District, and for the purpose of obtaining the necessary light and ventilation said dwelling was made to conform to the plan and design of the house located on the lot adjoining, now owned by Carrie L. Munn, the wife of the defendant Charles A. Munn, more particularly referred to in paragraph 7 of this bill; that prior to the erection of said dwelling by your complainant it was expressly understood and agreed between your complainant and William W. Windom, the then owner of subplot No. 141, in square No. 181, hereinafter referred to, that the area or space for which a permit has now been issued and upon which the defendants are now building the addition hereinafter referred to should be forever kept free and clear from all buildings, additions, structures or coverings of any kind or character in order that the necessary light and ventilation might be preserved to the premises of your complainant, and said Windom.

6        5. That such dwelling was and is still known as No. 1603 Massachusetts avenue, northwest, Washington, District of Columbia, and consists of the lots above described in par. 3, and a building three stories and basement in height, occupied and used as a dwelling by the complainant.

6. That the complainant is the owner of said lots and premises and also of the ground included in the bed of said street adjoining and abutting on the said lot to the center line of such street, subject only to the public easements hereinafter mentioned and as such owner of such premises, this complainant acquired a free and unobstructed right of way, access and passage to and from said lot and premises over and upon the said street and all parts thereof, together with all the use of the light and air coming in and upon said lot and premises and building, and the right to have doors and windows opening upon the said street and the light and air therefrom free and unobstructed with the right to use said street free from obstruction.

7. That the defendant Carrie L. Munn claims to own and is in possession of lot sub. No. 141, in square 181, in the city of Washington, District of Columbia, said lot being a parallelogram in shape, having a frontage of 60.92 feet or thereabouts on Massachusetts avenue, northwest and a depth of 66 feet more or less, being numbered 1601 Massachusetts avenue, northwest, and adjoins on the east the property of the complainant which is more particularly referred to in paragraph 3 of this bill.

7        8. That a portion of said lot of Carrie L. Munn has been improved by a three-story and basement brick dwelling-house, a portion of the outer lines of which are indicated in Exhibit No. 1 hereto annexed.

9. That the defendant Charles A. Munn is residing at No. 1601 Massachusetts avenue, northwest, and is the husband of Carrie L. Munn who claims to own and is in possession of the property referred to in paragraph 7 of this bill, and that he is the party in whose name the permit was issued on the 29th day of July, 1902, to build the brick addition hereinafter referred to; that the defend-

ant James G. Hill, is the architect in charge of the erection of the addition hereinafter referred to and that William P. Lipscomb is the builder at present engaged with his employees and agents in the erection of the addition to said building all of whom are proceeding in the erection of said addition without authority of law.

10. That on or about the 10th day of July, 1902, the defendant Carrie L. Munn without authority of law commenced the building of the foundation walls of a new brick addition to her said house, said walls being along the east side of the lots hereinbefore referred to of your complainant.

That said defendant Carrie L. Munn has since said date by her servants, agents and employees partially erected and is still engaged in building a superstructure upon said foundation walls which have about reached the level of the ground, the intention of said defendant Carrie L. Munn being, as complainant is informed and believes, to carry said superstructure to the height of three full stories, besides a basement story partly above the ground.

11. That the erection of such addition will operate to deprive the complainant of the light and air to which he is entitled under the law as owner of the premises hereinbefore referred to, and which he has enjoyed for the past twenty years or thereabouts, since said proposed addition will substantially destroy all light and ventilation to the pantry in the dwelling of your complainant as well as partially closing the window in his dining-room and the windows in the two rooms in the second and third stories of his said dwelling, on the east side thereof and in many other respects operate to injure his property aforesaid, as well as result in a grievous nuisance to your complainant.

12. It is furthermore averred that the erection of such addition is without a proper permit in that it was issued to one "C. A. Munn" who is not the owner of the property described in paragraph 7 of this bill, and that notwithstanding such fact, even if a permit had been issued to the proper party the erection of such addition is contrary to the provisions of the building regulations provided by the Commissioners of the District of Columbia to govern the erection and maintenance of buildings in the said District.

13. That complainant is informed and believes, and believing he avers, that in the erection of said addition the said Charles A. Munn is acting under the pretended authority of H. B. Davis, as acting inspector of buildings, as contained in a certain "permit," so called, issued by the said H. B. Davis as acting inspector as aforesaid, a copy of which said so-called "permit" is herewith filed marked "Exhibit No. 2," and made part hereof, which said so-called "permit" is dated July 29, 1902, and was issued to said "C. A. Munn" or his agent in pursuance of an application therefor. That complainant has requested the inspector of buildings as well as the District Commissioners to cancel or recall said permit but they declined so to do.

Your complainant further states that he has been informed and believes that some time prior to the granting of said last-mentioned

so-called "permit" an application for a permit for a like purpose was filed by said Charles A. Munn or in his behalf, but for reasons unknown to your complainant the same was rejected.

14. The complainant further avers that on the 1st day of March 1902, the Commissioners of the District of Columbia issued certain regulations governing the erection, removal, repair, and maintenance of buildings in the District of Columbia pursuant to the act of Congress approved June 14, 1878; that section 33 of said regulations provides as follows:

"To secure proper light and ventilation, dwellings, hotels, apartment or tenement houses, or buildings erected for and used or to be used as such shall be so located and erected on their respective premises as to provide for and preserve at least ten per centum of the area of the lot, plot, and premises free from all construction from ground to sky; but, furthermore, in no event, except on corner lots at intersection of two streets, shall said reserved space or area be so arranged or disposed as to permit the building or buildings aforesaid to be located or erected within ten feet of the rear line of the lot, plot, or premises on which the building stands or is to stand, but the last restriction may not be applied when the rear of the lot abuts on a public alley at least ten feet in width, a street or other public space or where the side abuts for the full depth of the lot upon a public alley at least ten feet wide, or where there is preserved a side yard or space extending the full depth of the building and of an area of at least 10 per centum of the area of the whole lot, plot, and premises on which the building is erected or to be erected; but in no event shall such side yard be of less area than 250 square feet. Any corner lot adjacent for its full depth to a street or avenue may be built upon for its full depth, provided at least 10 per centum of the area of such lot be reserved and arranged for light and ventilation in a manner approved by the inspector of buildings. Angular corner lots abutting lots that extend from street to street may be excluded from the above restrictions. Buildings on business streets may cover the entire area of a lot for such of the stories beginning with the lower as are used for store or salesroom purposes only. Fire-escapes shall be located so as not to encroach on any public alley less than 15 feet wide when such alley only is relied upon and used for ventilation and light, as provided for in this section; and, furthermore, no buildings mentioned in this section now or hereafter erected shall be altered or enlarged to *encroach upon space reserved for light and ventilation, either on the same or on adjoining premises.*"

11 That said section of said regulations was amended on the 29th day of May, 1902, so as to exclude the words "angular lots, abutting lots that extend from street to street may be excluded from the above restrictions," and there was inserted in lieu thereof the following:

"Acute-angle corner lots abutting lots that extend from street to street, or from a street to a public alley at least ten feet wide or when

sufficient facilities for light and ventilation are provided to the satisfaction of the Commissioners, may be excluded from the above restrictions."

That said amendment was amended on the 8th day of July, 1902, by striking out therefrom the words "acute angle."

Your complainant avers that the so-called permit issued to said defendant Charles A. Munn is contrary to said building regulations and any amendment thereof, and is totally insufficient and inoperative in law to authorize the erection by the defendant Charles A. Munn or Carrie L. Munn his wife of the said addition, but on the contrary, in so far as the same pretends to authorize the erection of said addition is utterly null, void, and of no effect, in that it fails to preserve at least 10 per centum of the lot, plot and premises free from all construction from ground to sky and furthermore encroaches upon the space reserved for light and ventilation for the premises of your complainant.

12 15. Your complainant further avers that the erection of the addition contemplated by the defendants Charles A. Munn or Carrie L. Munn, would involve an invasion of the complainant's right of property by shutting out the light and air from his said dwelling which right he has enjoyed for the past twenty years or thereabouts, and would constitute a grievous nuisance to complainant and in consequence would result in great damage and injury to his property.

Wherefore being without remedy at law your complainant prays:

1. That a writ of subpoena may issue out of and under the seal of this honorable court directed to the said defendants Charles A. Munn, Carrie L. Munn, James G. Hill and William P. Lipscomb, whom your complainant prays may be made defendants hereto commanding them to appear and answer the exigencies of this suit, their answers under oath being hereby expressly waived.

2. That the defendants Charles A. Munn, Carrie L. Munn, James G. Hill and William P. Lipscomb, their agents, servants and employees be perpetually enjoined and restrained from further proceeding with the erection of said addition in the 10th paragraph of this bill described, and further that the defendant Carrie L. Munn be enjoined and required to remove the said structure so far as the same is already built and so far as the same deprives the dwelling  
13 of the complainant of light and air and to restore such part of the land now occupied by the partially built walls of said addition so far as it interferes with the light and air of said premises, of your complainant to the same condition in which it was before the commencement of the erection of said addition and that each of said defendants be enjoined and restrained during the pendency of this suit from further proceeding with the erection of the addition in the 10th paragraph of this bill described.

3. And for such other and further relief as the nature and circum-

stances of the case may require and to this honorable court shall seem proper.

STILSON HUTCHINS.

BRANDENBURG & BRANDENBURG,  
*Solicitors for Complainant.*

DISTRICT OF COLUMBIA, ss:

Stilson Hutchins upon oath says that he has read the foregoing petition by him subscribed; that the facts therein stated upon his personal knowledge are true and those stated upon information and belief he believes to be true.

STILSON HUTCHINS.

Subscribed and sworn to before me this 13th day of August, A. D., 1902.

[SEAL.]

H. J. SWEENEY,  
*Notary Public, D. C.*

(Here follows diagram marked p. 14.)

15 & 16 (Projections beyond the building line allowed as per plans approved and on file in the office of the inspector of bldgs.)

EXHIBIT No. 2.

No. 202.

Walls shall not be erected to a greater height than (1'-0'') above footings until their correct location is certified by surveyor D. C. See sec. 27, building regulations.

(MARGINAL NOTE.)—Also one bay window 1' 3'' proj. x 8' 0'' wide on bldg. line & measured 3' 6'' one foot from bldg. line.

*Permit to Repair or Reconstruct Buildings, District of Columbia.*

Office of inspector of buildings.

WASHINGTON, *July 29th*, 1902.

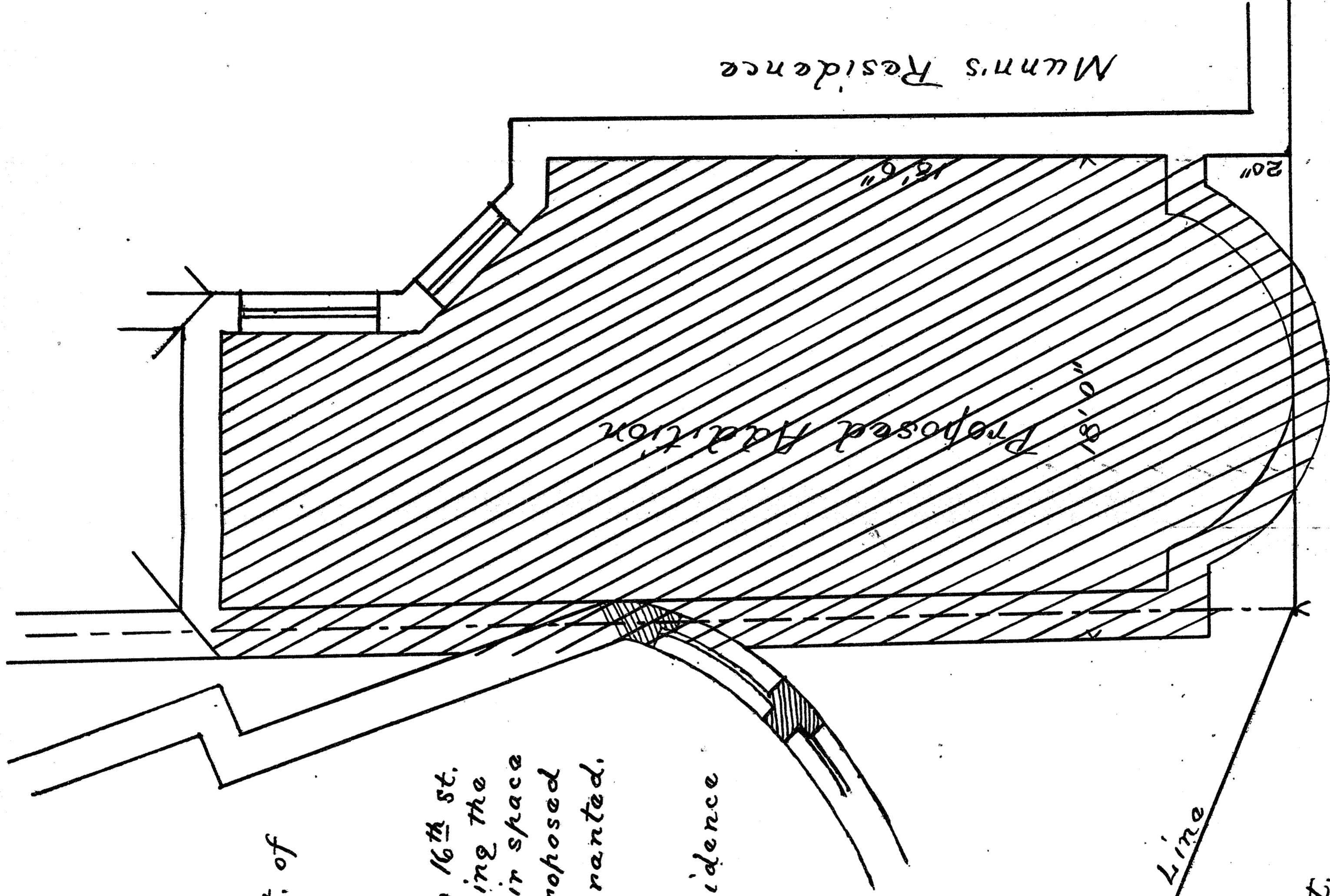
This is to certify, that C. A. Munn has permission to build one brick addition 12' 6'' x 25' 0'', 3 story & base—slate roof—concrete base 12'' thick 3 courses brick footings—18'' walls in base front and party wall—18'' front wall—13'' walls for balance—1601 Mass. Ave. N. W., in accordance with application No. 202 on file in this office, and subject to the provisions of the building regulations of the District.



Total area  
4020 Sq. ft. of  
Munn's lot.

Area space on 16<sup>th</sup> st.  
9'6" x 4'0" being the  
only light or air space  
left if this proposed  
addition is granted.

Hutchins' Residence



Building Line

Scale =  
1/4" = 1 foot.

Filed, AUGUST 14, 1902.

Exhibit No. 1



The right is reserved to examine the buildings as often as may be necessary while in course of erection, and order any change in the construction that may be deemed requisite to insure strength, solidity and safety from fire.

All flues must be inclosed with brick wall nine inches thick, or cased with terra-cotta pipes eight inches inside diameter, inclosed with brickwork not less than four and one-half inches thick. No material or rubbish to be stacked or deposited within three feet of any tree.

By order of the Commissioners, D. C.

H. B. DAVIS,  
*Acting Inspector of Buildings.*

Paid \$1.00.

Deposit 25.00 No. 1413.

August 1st, 1902.

17

*Restraining Order.*

Filed August 14, 1902.

In the Supreme Court of the District of Columbia, Holding a Court in Equity.

STILSON HUTCHINS, Complainant,	}	No. 23468. Equity.
vs.		
CHARLES A. MUNN, CARRIE L. MUNN, JAMES G. Hill, William P. Lipscomb, Defendants.		

On reading and filing the bill of complaint of Stilson Hutchins, complainant, in this cause, and upon motion of Brandenburg and Brandenburg, Esquires, solicitors for complainant, it is ordered this 14th day of August, 1902, that the defendants and each of them show cause before this court upon the 4th day of September, A. D. 1902, at the opening of court, why the prayer of said bill, asking for a permanent injunction be not granted, with the option to apply at an earlier date for a hearing upon proper notice to counsel for complainant.

It is further ordered that until the hearing upon said order to show cause, the defendants and each of them, be restrained and enjoined from continuing the erection of the addition to the dwelling specifically referred to in paragraphs seven and ten of the bill of complaint.

By the court:

HARRY M. CLABAUGH,  
*Associate Justice.*

*Motion to Discharge Rule, &c.*

Filed August 27, 1902.

In the Supreme Court of the District of Columbia, Holding an  
Equity Court.

STILSON HUTCHINS, Plaintiff,	}	Equity. No. 23468.
<i>v.</i>		
CHARLES A. MUNN and Others, Defendants.		

Now comes here the defendants by their attorneys, Messrs. Samuel Maddox and H. Prescott Gatley, and move the court to discharge the rule to show cause and to dissolve the preliminary restraining order or injunction heretofore granted in the above-entitled cause.

SAM'L MADDUX,  
H. PRESCOTT GATLEY,  
*Attorneys for Defendants.*

Messrs. Brandenburg & Brandenburg, attorneys for plaintiff:

Please take notice that on Thursday, August 21, 1902, at ten o'clock a. m. or as soon thereafter as counsel can be heard, we will call the attention of Mr. Justice Clabaugh, holding the equity court, to the foregoing motion, and ask for an order in accordance therewith.

SAM'L MADDUX,  
H. PRESCOTT GATLEY,  
*Attorneys for Defendants.*

Service of copy of above motion acknowledged this 17th day of August, 1902.

BRANDENBURG & BRANDENBURG.  
W. D. WAUGH.

*Joint and Several Answer of Munn et al.*

Filed October 30, 1902.

In the Supreme Court of the District of Columbia.

STILSON HUTCHINS, Complainant,	}	Equity. No. 23468.
<i>vs.</i>		
CHARLES A. MUNN and CARRIE L. MUNN, Defendants.		

The joint and several answer of defendants Charles A. Munn and Carrie L. Munn to the bill of complaint exhibited in this cause against them and others by Stilson Hutchins.

These defendants now and at all times hereafter, saving to themselves all and all manner or benefit or advantage of exception or

otherwise that can or may be had or taken to the many errors, uncertainties and insufficiencies in the bill of complaint herein contained, for answer to the rule to show cause issued thereon and to the said bill, or to so much thereof as they are advised it is material or necessary for them to make answer to, answering say :

1. They admit to be true the averments of paragraph one of the bill.

2. They admit to be true, as averred in paragraph 2 of the bill, that the defendants are all citizens of the United States, commorant in the District of Columbia, and these defendants show that they are husband and wife and for many years last past have made their home in house and premises known as No. 1601 Massachusetts  
20 avenue, northwest, in the city of Washington, District of Columbia. But these defendants submit that it is nowhere averred or shown either in said paragraph 2, or in any other part of said bill, why they should be interpleaded with defendants Hill and Lipscomb in respect of any matter or thing complained of in said bill.

3. These defendants know nothing of their own knowledge of the averments of paragraph 3 of the bill and in so far as the same can or may affect the rights of these defendants *defendants* in the premises they call for strict proof thereof.

4. Answering paragraph 4 of the bill, these defendants say that they do not know of their own knowledge when complainant bought the property he claims to own or whether or not the house thereon erected by him was built in pursuance of a permit from the inspector of buildings in conformity with the building regulations then in force in said District. But these defendants show that the east wall of complainant's house is a party wall and that said wall encroaches two and one-half inches over the lot of defendant, Carrie L. Munn, in excess of what is allowed by law; that said wall is solid and without openings of any kind to a height of two stories and for a distance of, to wit, 28 feet measured on a line running due south from the northeast corner of complainant's lot; at the south end of this solid wall there is a recess pantry window in complainant's house set back some distance *room* the division line between the two lots, but evidently so constructed in order that light and air might get into said window in the event that the lot adjoining on the east was ever built upon, but protruding beyond this line at a  
21 point distant twenty (20) feet north of the building line on Massachusetts avenue, more than eleven (11) inches. To the extent herein shown the complainant unlawfully and without right is trespassing upon the lands of defendant Carrie L. Munn and should and ought to be required to remove his said wall from her said lands.

Further answering said paragraph, these defendants say that they do not know what, if any agreement, was made by the complainant, at the time he erected his said house, with William Windom, a former owner of the lot now owned by defendant Carrie L. Munn, with regard to buildings of any sort thereafter to be erected on the

portion of said lot — which said defendant is now desirous of erecting an addition to her dwelling-house. And these defendants are advised that even if there was such an agreement, which they do not believe, the same is not binding upon these defendants, or either of them, and for the reason that they had no notice or knowledge, prior to the filing of the bill in this cause, thereof, and the said lot was conveyed to defendant Carrie L. Munn by said William Windom in fee-simple absolute as will appear by reference had to a copy of the deed heretofore filed in this cause, marked "Defendants' Exhibit H. & L. No. 2," through and by which deed, the defendant Carrie L. Munn acquired the title to her said lot. And these defendants are advised that said alleged agreement can in no sense be binding upon them or either of them for the further reasons that it does not appear that it was reduced to writing or that any consideration therefor moved from the complainant to the said William Windom.

22 To the contrary of any such agreement defendant Charles A. Munn says that at the time of the purchase of said lot 141, and during all negotiations connected therewith, he acted for his wife, defendant Carrie L. Munn, and carefully examined the building erected on said lot, and the vacant grounds appurtenant to said building in company with said William Windom, then in life and the owner thereof, but since deceased. Defendant Charles A. Munn then noticed the hereinbefore referred to recess window in the east wall of complainant's house, and also three or four windows in the south wall of the house next adjoining said lot 141 (also erected, as these defendants are informed, by complainant), on the north, all of which overlooked said lot. Calling attention to each and all of these windows, the said defendant inquired of said Windom if the lot he was then desirous of selling and afterwards sold to defendant Carrie L. Munn, was in any way obligated to furnish light and air to the adjoining property through said windows, or any of them. In reply to this inquiry said Windom told defendant Charles A. Munn, most positively, that there was no obligation or agreement of any kind resting upon or encumbering said lot 141 which would prevent building upon the entire lot if a purchaser from him, said Windom, so desired. Had there been any restriction upon said lot 141 because of windows looking over it from the houses next adjoining on the west and north, these defendants would not have bought said lot or certainly would not have paid the price they did for it. The freedom of said lot from any and all building restrictions entered into and formed a material part of the consideration for its purchase.

Wherefore, and for the reason that the said William Windom, as was well known to defendant Charles A. Munn, was  
23 an upright and honorable man, who had attained high preferments both in his State and in the United States, these defendants say that it is not true that he ever entered into such an agreement as that set up and pretended in said paragraph 4 of the bill.

5. These defendants admit to be true the averments of paragraph 5 of the bill.

6. These defendants are advised that the averments of paragraph 6 of the bill, except in so far as they reiterate the allegation previously made in the bill that complainant owns the house next adjoining on the west the house of these defendants, states conclusions of law which these defendants are not required to answer. But these defendants are informed that the Supreme Court of the United States has held that the complainant has no other or greater rights in the street on which his house is built than any other individual member of the public, and that without the consent of the United States said street is subject to no private use whatever.

7. Answering paragraph 7 of the bill, these defendants say that defendant Carrie L. Munn does not pretend to own but does in fact own, said lot No. 141 in fee-simple absolute, which said lot is described with substantial accuracy in said paragraph.

8. Answering paragraph 8 of the bill, these defendants admit that part of said lot 141 is improved by a three-story and basement brick dwelling-house, amply provided with windows for all needed requirements of light and ventilation. Further answering said  
24 paragraph these defendants show that other portions of said lot are improved with two one-story structures, with adjustable glass skylights which afford ample light and ventilation for the purposes for which said structures were erected, viz., for a billiard-room and a conservatory.

9. Answering paragraph 9 of the bill, these defendants admit that defendant Charles A. Munn resides with his family at house numbered 1601 Massachusetts avenue, built upon said lot, and that defendant Carrie L. Munn is his wife. Further answering said paragraph these defendants aver and show that after they had determined upon the style and arrangement of a proposed addition to said house, defendant James G. Hill was employed to prepare plans and specifications for said addition and have the said addition erected in accordance therewith. Full authority was given by these defendants to the said defendant Hill to procure necessary permits from the District authorities and enter into all necessary contracts for doing the proposed work, said defendant Hill well knowing that the said lot 141 belonged to defendant Carrie L. Munn. After these preliminaries had thus been arranged, and before a permit to build said proposed addition had been applied for, so far as these defendants knew at the time, these defendants went to Europe, leaving said defendant Hill in charge of the proposed work, with full power and authority from defendant Carrie L. Munn to provide all the material and employ all the labor necessary for erecting the proposed addition and making other changes in said house No. 1601 Massachusetts avenue.

And these defendants aver and show that each and everything  
25 done by said defendant Hill in the premises, and by defendant Lipscomb in and about the said work, is in strict accordance with the building regulations in force in the District of

Columbia and the permits in that behalf granted by the inspector of buildings.

10. Answering paragraph 10 these defendants say that, for reasons hereinbefore set forth, to wit, their absence in Europe, they do not know when defendant Lipscomb commenced building said foundation walls, or to what extent said work had proceeded when the bill in this cause was filed. But these defendants admit that it was their purpose to carry said proposed addition to the full height of three full stories on the portion of said lot fronting on Massachusetts avenue, with a width of 12 feet 6 inches, by a depth of 32 feet, and they were very anxious to have the necessary work done during the summer months so that said house might be ready for occupancy by or before the middle of November, as could readily have been accomplished but for the restraining order herein.

11. Answering paragraph 11 of the bill, these defendants say that it is not true that the erection of the proposed addition to their said home will deprive the complainant of light and air to which he is entitled under the law as owner of lands next adjoining on the west, and they further say that it is not true that complainant has acquired by prescription or otherwise any right to light and air over and across said lot 141, the property of defendant Carrie L. Munn. Further answering said paragraph, these defendants say that when the complainant erected his said house 1603 Massachusetts avenue, he built a party wall along the east line thereof, and intentionally, as these defendants believe, caused the same to be extended a greater

distance over said lot 141 than he was by law entitled to do;  
26 and that when defendant Carrie L. Munn built the one-story structures hereinbefore referred to the complainant exacted from her, and she paid to him, the full compensation provided by the laws in force in the District of Columbia for the use of party walls.

12. Answering paragraph 12, these defendants say that, as hereinbefore shown, after they had determined upon style and character of desired changes in their home, all further details connected with the work were instructed to defendant Hill, and they are informed that a permit to build was applied for by defendant Lipscomb, the contractor employed by defendant Hill to do said work. And if said Lipscomb applied for a permit in the name of "C. A. Munn," and a permit in that name was issued, it was a mere clerical error from which the complainant ought not to receive any benefit or advantage, and about which he ought not, in equity be heard to complain.

Further answering said paragraph, these defendants say, as hereinbefore set forth and shown, that all steps taken by them and their codefendants Hill and Lipscomb, in and about the said proposed work, have been and were intended to be in strict accordance with the laws and building regulations in force in the District of Columbia.

13. Answering paragraph 13, these defendants say that they are informed and believe, and so believing aver and show that the per-

mit to build, issued as before shown on the application of defendant Lipscomb, was regularly and properly issued by one H. B. Davis, as acting inspector of buildings during the absence of his superior officer, under and by virtue of authority vested in him by said building regulations. Further answering said paragraph, these defendants show, as appears in the concluding sentence of the first

27 clause of said paragraph, that the matter of said permit was brought to the attention of the District Commissioners by the complainant, with request that the same be cancelled and revoked, which request the said Commissioners declined, thereby confirming the act of their subordinate, the said H. B. Davis, in the premises. And these defendants are advised that the action so had and taken by the District of Columbia Commissioners and their subordinates in office in respect of said permit is final and conclusive, and cannot be questioned by the complainant in this proceeding.

14. Answering so much of paragraph 14 as refers to the promulgation of building regulations for the city of Washington by the District Commissioners, and the several quotations and references to said regulations and amendments thereto from time to time duly and properly made, these defendants admit that the same are set forth with substantial accuracy in said paragraph, but for greater certainty refer to the published volumes containing said regulations and the records of the District Commissioners' office showing amendments thereto since made, copies of which latter in so far as the same affect in any way the proposed addition to defendants' said dwelling are herewith filed marked "Defendants' Exhibit H. & L. No. 4," which it is prayed may be referred to at the hearing of this cause and taken and considered a part hereof.

Further answering said paragraph, these defendants say that they are advised that the District Commissioners have ample power and authority of law to make and enforce building regulations for the said District and modify the same from time to time as they may think the public interests require; and that the said amendments  
28 so as aforesaid made and contained in Defendants' Exhibit No. 4 are in all respects reasonable and cannot be questioned by the complainant in this proceeding.

Further answering said paragraph, these defendants here again deny that the erection of said proposed addition is contrary to law or to said building regulations or contravenes any right the complainant may or can have in the premises.

Further answering said paragraph, these defendants show that their said dwelling-house is built upon a corner lot, fronting on the south on Massachusetts avenue, a public highway 160 feet in width, and on what is known as "Scott circle," a large open public park, and on the east on 16th street, a public highway also 160 feet in width; that said dwelling-house is provided with windows and skylights amply sufficient for all purposes of light, air and ventilation, and by reason of its location and surroundings and plan of construction is in all respects in a sanitary condition and contains, generally, all the latest improvements in the house-builders' art designed to make homes attractive, comfortable and elegant.

15. Answering paragraph 15 of the bill, these defendants here again deny that the erection of said proposed addition to their said dwelling-house involves any, even the slightest, invasion of complainant's right of property in his said lot next adjoining on the west, or that he has any right to light and air over and across the lot of defendant Carrie L. Munn, and they further deny that complainant has enjoyed such a right for a period of twenty years, or ever lawfully acquired such a right by prescription or otherwise. And these defendants further deny that said proposed addition will, in any sense be or constitute a nuisance, it being the purpose  
29 of these defendants to build said addition of the material best suited to such work and in a style consistent with and conforming to their present dwelling-house, which is and is considered one of the finest private residences in the city of Washington.

Further answering said paragraph, these defendants show that in erecting said addition it is their purpose to continue to within 18 inches of the Massachusetts Avenue front of said lot 141 the party wall heretofore constructed by complainant along the division line at the north end of his lot, and that it would be most inequitable to prevent her from so doing, thereby confiscating for the benefit of the complainant a valuable piece of property and rendering the same practically useless to her or to any other person than the complainant in this cause.

And these defendants further set forth and show that the restraining order issued in this cause during their absence in Europe, and while defendant Charles A. Munn was at Carlsbad for the benefit of his health, was and is a grievous inconvenience to them and a great injury. Said restraining order has delayed the prosecution of said work since the 14th of August, 1902, and will prevent the defendant Lipscomb from completing the work in time to make the house available during the coming season either for occupancy by these defendants or to rent in the event they conclude to spend the forthcoming winter in Europe.

And these defendants submit to this honorable court that all and every the matters in said complainant's bill mentioned and  
30 complained of are matters which may be tried and determined at law and with respect to which the said complainant is entitled to any relief from a court of equity, and these defendants hope they shall receive the same benefit of this defense as if they had demurred to the said complainant's bill.

Wherefore, defendants pray that said restraining order be forthwith discharged.

And having fully answered said bill or so much thereof as they are advised it is necessary or material for them to make answer unto, these defendants pray to be hence dismissed with their reasonable costs in this behalf most wrongfully and inequitably sustained.

And defendants will ever pray, &c.

CHARLES A. MUNN.  
CARRIE L. MUNN,  
By CHARLES A. MUNN,  
*Her Attorney-in-fact.*

SAM'L MADDOX,  
*Solicitor for Defendants.*

STATE OF NEW YORK, }  
*City of New York, County of New York,* } ss:

Before me, the undersigned, personally appeared Charles A. Munn, who, being first duly sworn, according to law, deposes and says:

31 I have read over the foregoing answer by me subscribed and know the contents thereof; the matters and things therein stated as of my own knowledge are true and the matters and things therein stated on information and belief I believe to be true. I further say that in all matters pertaining to the purchase of house No. 1601 Massachusetts avenue and in the matter of remodellings and changes therein since made from time to time, I acted as the business agent of my wife Carrie L. Munn. With her approval and consent I employed James G. Hill an architect of large experience, to prepare plans for the proposed addition to her said house, and authorized him to contract in her name for the erection thereof. She sailed for Europe on or about the 8th day of May, 1902, and I followed on the 6th day of June, next succeeding, leaving said Hill in charge of the proposed work. We were both in Europe when the bill in this cause was filed and when we learned that the presence in Washington of one or the other of us was necessary, I immediately came back, leaving her in Dresden, where she still is. And I was fully authorized by her to employ counsel in her behalf and do whatever else was necessary in her place and stead, to secure a dissolution of the restraining order issued in this cause and procure the speediest possible completion of the work.

CHARLES A. MUNN.

Subscribed and sworn to before me this 8th day of October, A. D. 1902.

[SEAL.]

SELAH L. BENNETT,  
*Notary Public, Westchester Co.*

Ctf. filed in New York Co.

Filed August 27, 1902.

No. 593.

*Application for Permit to Build.*

(Brick and stone.)

WASHINGTON, Oct. 28, 1882.

To the inspector of buildings :

The undersigned hereby applies for a permit to build according to the following specification :

1. State how many buildings to be erected? One.
2. Material? Brick.
3. What is the owner's name? Stilson Hutchins.
4. " " architect's name? C. H. Read, Jr., eng.
5. " " builder's " Jas. Westenfield.
6. " " location? Sq. / 181.
7. " " nearest street? Mass. Ave. bet. 16 & 17 N. W.
8. " " purpose of the building? Dw'l'g.
9. If a dwelling, for how many families? —.
10. Is there a store in the lower story? —.
11. Is building to be erected on solid or filled land? —.
12. Size of lot, —; No. of feet front, —; No. of feet rear, —; No. of feet deep, —.
13. Size of building, —; No. of feet front, 48; No. of feet rear, —; No. of feet deep, 60; No. of stories in height, three *bas'm't* (?); No. of feet in height from sidewalk to highest point of roof, —.
- 33 14. No. of feet in height from level of sidewalk to highest part of wall, —.
15. No. of feet in height from sidewalk to eaves, —.
16. Size of back building, — feet long; — feet wide; — feet high; No. of stories, —. Style of roof —.
17. Material of foundation, —.
18. Thickness of external walls, cellar or basement, 18; 1st story 14; 2d story 14; 3d story 9; — 4th story —; 5th story —. Thickness of party walls, cellar or basement, 18; 1st story 14; 2d story 4; 3d story 9; — 4th story —; 5th story —. Are party walls solid or vaulted? Solid.
19. What will be the materials of front? —. If of stone what kind? —.
20. Will the roof be flat, pitched or mansard? —.
21. What will be the material of cornice? Ornamental projections? —.
22. What will be the means of access to the roof? —.
23. Are there any hoistways? How protected? —.
24. How is the building heated? —.

25. Are there any bay windows? — Height —; width —; projection —; form —.

26. Are there any tower projections? —. Height —; width —; projection —.

27. Are there any show-windows? —. Form —; projection —.

28. What will be the projection space from the building line? —.

29. Are there any vaults? —. Dimensions —.

30. What is the width of the roadway, sidewalk and park?

31. Will there be an area? —. Width —; how protected, —.

32. Will there be cellar steps? —. How protected; —.

33. Is the lower story to be used for business purposes of any kind? —.

34. What is the estimated cost of the proposed improvements? \$16,000.

Name:

C. H. READ, JR.,

Address:

For STILSON HUTCHINS.

Written across the face of the above permit are the following words :

“Projections as allowed by Commissioners D. C. on file.”

Endorsed.

\$2.00.

TREASURER'S OFFICE,  
DISTRICT OF COLUMBIA,  
WASHINGTON, D. C., *October 28th, 1882.*

Received of Stilson Hutchins — the sum of two dollars, for permit to erect one brick building and — front feet for vault to be approved by the inspector of buildings.

THOS. B. ENTWISLE,  
*Inspector of Buildings, D. C.*

35 DEFENDANTS' EXHIBIT H. & L. No. 2.

Filed August 27, 1902.

William Windom *et ux.* }  
to  
Carrie L. Munn. }

Recorded April 23rd, 1888, 1.02 p. m. Deed.

Liber 1310, folio 415 *et seq.*

This indenture, made this eighteenth day of April in the year of our Lord one thousand eight hundred and eighty-eight between William Windom and Ellen T. Windom his wife of the State of Minnesota of the first part and Carrie L. Munn wife of Charles A. Munn of Chicago, in the State of Illinois of the second part, witnesseth that the said parties of the first part for and in consideration of the sum

of seventy thousand 00/100 (\$70,000) dollars, current money of the United States to them in hand paid by the said party of the second part the receipt of which, before the sealing and

Fee \$1.50. delivery of these presents is hereby acknowledged have granted, bargained and sold, aliened, conveyed and confirmed and by these presents do grant, bargain and sell, alien, enfeoff, convey and confirm unto and to the use of the said party of the second part his heirs and assigns. All that certain piece or parcel of land and premises situated and being in the city of Washington District of Columbia known and distinguished as lot numbered one hundred and forty-one (141) in Olmstead's subdivision of lots in square numbered one hundred and eighty-one (181) as per plat recorded in Book No. 11 folio 21 of the records of the surveyor's office of the District of Columbia being premises numbered sixteen hundred and one (1601) Massachusetts avenue northwest, subject, however, to a certain deed of trust dated September 23d, 1884, recorded in Liber No. 1096, folio 149 of the land records of the District

of Columbia securing an indebtedness of fifteen thousand 36 dollars (\$15,000) the payment of which is hereby assumed by the party hereto of the second part and forms a part of the consideration above named together with the rights, easements privileges and appurtenances to the same belonging or in anywise thereto appertaining. To have and to hold the said land and premises with the appurtenances and hereditaments to the same belonging unto and to the only use and benefit of said party of the second part her heirs and assigns. And the said parties of the first part for themselves their heirs executors and administrators do hereby covenant with said party of the second part her heirs and assigns that the said hereinabove-described land and premises with the appurtenances unto said party of the second part her heirs and assigns from and against all persons claiming by through or under said parties of the first part or their heirs or assigns, or either or any one of them except as to the before-mentioned deed of trust, the said parties of the first part and their heirs shall and will forever warrant and defend by these presents and further that any act or deed deemed by counsel learned in the law requisite and necessary the more perfectly to assure unto said party of the second part her heirs and assigns the said land and premises hereinabove granted the said parties of the first part and their heirs shall and will at all times at the cost of the person requesting the same do perform, execute and deliver.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

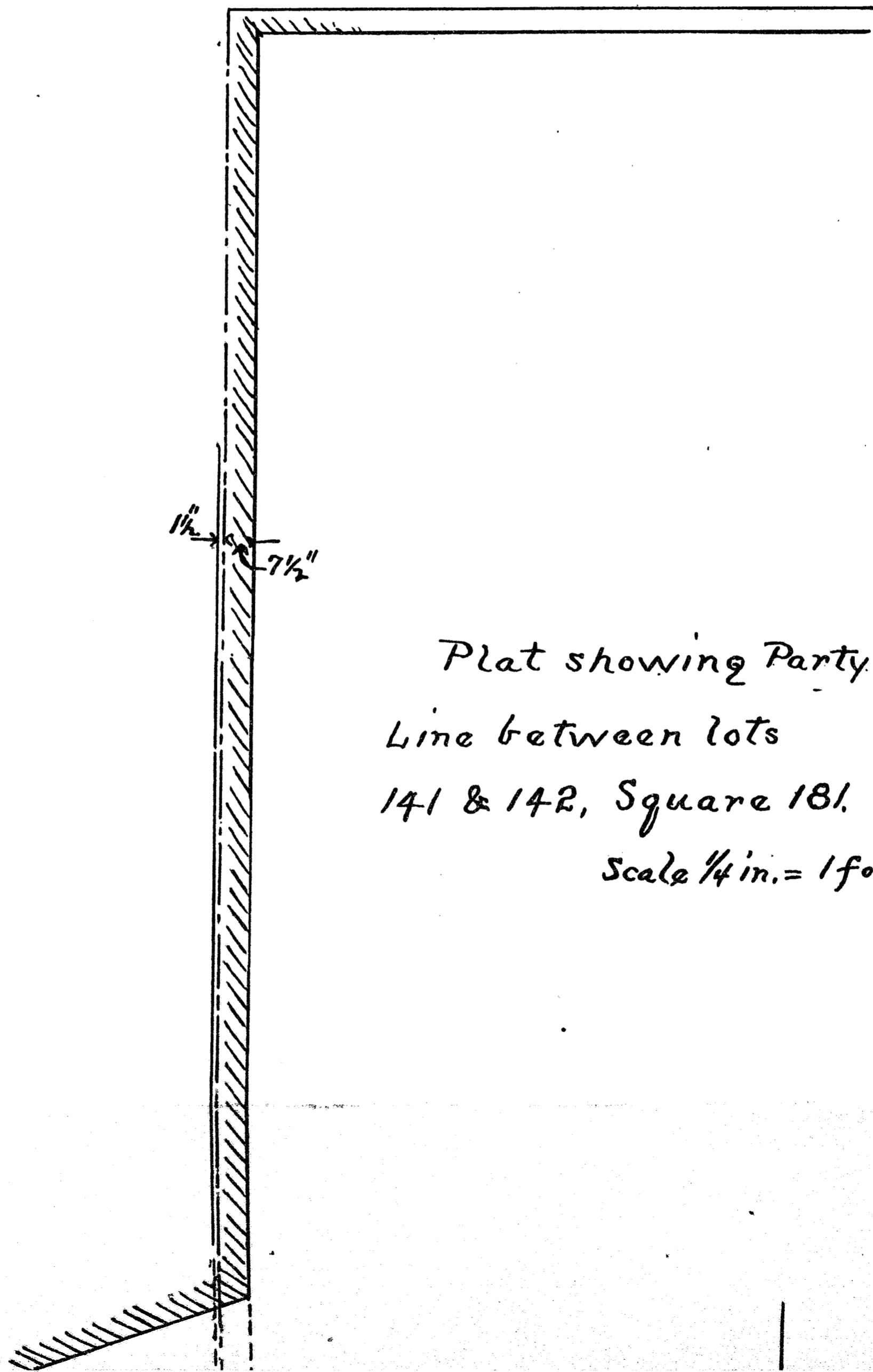
WILLIAM WINDOM. [SEAL.]  
ELLEN T. WINDOM. [SEAL.]

Signed, sealed and delivered in presence of us:

JOSEPH B. BRAMAN.  
FLORANCE B. WINDOM.



EXHIBIT H. & L. No. 3,  
Filed, AUGUST 27, 1902.



Plat showing Party  
Line between lots  
141 & 142, Square 181.  
Scale  $\frac{1}{4}$  in. = 1 foot.

Stilson Hutchins

Face of wall above  
1st story window sills.

Face of wall below  
1st story window sills.

C. A. Munn.

Lot 142

Lot 141

Party Line

16th St.

Mass. Ave.



37      STATE OF NEW YORK, }  
           City and County of New York, } ss :

I, Joseph B. Braman a commissioner of deeds for the District of Columbia in and for the city, State and county aforesaid do certify that William Windom and Ellen T. Windom his wife of the State of Minnesota parties to a certain deed bearing date on the eighteenth day of April, A. D. 1888 and hereto annexed personally appeared before me in the city and county aforesaid the said William Windom and Ellen T. Windom his wife being personally well known to me to be the persons who executed the said deed and acknowledged the same to be their act and deed, and the said Ellen T. Windom being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her by me acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed and delivered the same and that they wished not to retract it.

Given under my hand and official seal, this nineteenth day of April, A. D. 1888.

[COMMISSIONER'S SEAL.]      JOSEPH B. BRAMAN,  
           *Commissioner of Deeds for the District of Columbia in and  
           for the State of New York, Resident in said City of New  
           York.*

Offices Equitable building 120 branch and residence 1270 Broadway, N. Y. city.

District of Columbia, Office of the Recorder of Deeds.

AUGUST 18, 1902.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1310 fol. 415 *et seq.*, one of the land records of the District of Columbia.

[SEAL.]      GEO. F. SCHAYER,  
                           *Dep. Recorder of Deeds.*

(Here follows diagram marked p. 38.)

39      DEFENDANTS' EXHIBIT H. & L. No. 4.

Filed October 30, 1902.

Executive Office, Commissioners of the District of Columbia.

WASHINGTON, May 28, 1902.

Ordered: That section 33 of the building regulations, relative to light and ventilation, is hereby amended by excluding the sentence "Angular lots abutting lots that extend from street to street may be excluded from the above restrictions," and inserting in lieu thereof the following :

("Acute angle) corner lots abutting lots that extend from street to street, or from a street to a public alley at least ten feet wide, or where sufficient light and ventilation are provided to the satisfaction of the Commissioners, may be excluded from the above restrictions."

Official copy furnished.

By order:

WILLIAM TINDALL,  
*Secretary Board of Commissioners, D. C.*

40 Executive Office, Commissioners of the District of Columbia.

WASHINGTON, July 7, '02.

Ordered: That the order of May 28, 1902, amending section 33 of the building regulations relative to lighting and ventilation, is hereby amended by striking out the words "acute angle."

Official copy furnished.

By order:

WILLIAM TINDALL,  
*Secretary Board of Commissioners, D. C.*

41

*Motion for Defendants, &c.*

Filed October 30, 1902.

In the Supreme Court of the District of Columbia.

STILSON HUTCHINS	}	In Equity. No. 23468.
vs.		
CHARLES A. MUNN and Others.		

To Hon. Thos. H. Anderson, associate justice supreme court of the District of Columbia:

The defendants Charles A. Munn and Carrie L. Munn, having filed their answer to the bill of complaint exhibited in this cause against them, humbly beg and pray that the restraining order passed herein on the 14th day of August, 1902, be forthwith discharged.

And these defendants will ever pray, &c.

CHARLES A. MUNN,  
CARRIE L. MUNN,  
By SAM'L MADDOX,  
*Their Attorney.*

This motion is respectfully referred to Mr. Justice Hagner.

T. H. ANDERSON,  
*Asso. Justice.*

October 30 / 02.

42

*Replication.*

Filed November 17, 1902.

In the Supreme Court of the District of Columbia, Holding a Court  
in Equity.

STILSON HUTCHINS, Complainant,	}	No. 23468. Equity.
<i>vs.</i>		
CHARLES A. MUNN, CARRIE L. MUNN, JAMES		
G. Hill, and William P. Lipscomb, Defend- ants.		

The complainant hereby joins issue with the defendants.

BRANDENBURG & BRANDENBURG,  
*Solicitors for Complainant.*

*Order Dissolving Temporary Injunction, &c.*

Filed November 21, 1902.

In the Supreme Court of the District of Columbia.

STILSON HUTCHINS, Complainant,	}	Equity. No. 23468.
<i>vs.</i>		
CARRIE L. MUNN ET AL., Defendants.		

This cause coming on to be heard on the motion of the defend-  
ants to dissolve the temporary injunction and discharge the rule to  
show cause heretofore granted herein, the bill of complaint and the  
answers of the defendants thereto, the exhibits to said bill  
43 and answers, and all other the proceedings were read and con-  
sidered, and after argument by counsel for the respective  
parties, the same was submitted to the court.

It is thereupon, this 21st day of November, A. D. 1902, after due  
consideration, thereof by this court and the authority thereof, ad-  
judged and ordered that the temporary injunction heretofore granted  
herein on the 14th day of August, A. D. 1902, be, and the same is  
hereby, dissolved, and the rule to show cause issued herein on the  
same day be, and the same is hereby, discharged.

It is further adjudged, ordered and decreed that this cause be,  
and the same is hereby, referred to the auditor of this court, to  
ascertain and report the damages, if any, sustained by the defend-  
ants, or either of them, by reason of the wrongfully and inequitably  
suing out of the said injunction, and also the costs of this cause.

By the court:

A. B. HAGNER,  
*Associate Justice.*

*Order Vacating Decree, &c.*

Filed November 25, 1902.

In the Supreme Court of the District of Columbia.

STILSON HUTCHINS	} In Equity. No. 23468.
vs.	
CHARLES A. MUNN and Others.	

44 It appearing to the court that the order passed herein on the 21st day of November, A. D., 1902, did not express the judgment of the court upon the case as presented and decided, in that said decree prematurely referred the cause to the auditor to ascertain and report upon the question of damages, if any, resulting to the defendants by reason of the wrongful suing out of the temporary injunction :

It is therefore this 25th day of November, A. D. 1902, ordered that said order as so passed be and the same is hereby vacated and for nothing held, and the following substituted in its place and stead :

This cause coming on to be heard on the motion of the defendants to dissolve the temporary injunction and discharge the rule to show cause heretofore granted herein, the bill of complaint and the answers of the defendants thereto, the exhibits to said bill and answers, and all other the proceedings were read and considered, and after argument by counsel for the respective parties, the same was submitted to the court.

It is thereupon this 25th day of November, 1902, after due consideration thereof, by this court, and the authority thereof, adjudged and ordered that the temporary injunction heretofore granted herein on the 14th day of August, A. D., 1902, be, and the same is hereby, dissolved, and the rule to show cause issued herein on the same day be, and the same is hereby discharged.

By the court :

A. B. HAGNER, *Justice.*

January 5, 1903.—\$100.00 deposited by complainant in lieu of appeal bond, by leave of court.

46 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }  
District of Columbia, } ss :

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 45, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 23,468, in equity, wherein Stilson Hutchins is complainant, and Charles A. Munn *et al.* are defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe  
Seal Supreme Court my name and affix the seal of said court, at  
of the District of the city of Washington, in said District, this  
Columbia. 9th day of January, A. D. 1903.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1274. Stilson Hutchins, appellant, *vs.* Charles A. Munn *et al.* Court of Appeals, District of Columbia. Filed Jan. 17, 1903. Robert Willett, clerk.



ADDITION TO RECORD PER STIPULATION OF  
COUNSEL.

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COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1903.

No. 1274.

---

No. 3, SPECIAL CALENDAR.

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STILSON HUTCHINS, APPELLANT,

*vs.*

CHARLES A. MUNN, CARRIE L. MUNN, JAMES G. HILL,  
AND WILLIAM P. LIPSCOMB.

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FILED MARCH 31, 1903.

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*Opinion of Justice Hagner.*

Filed February 17, 1903. J. R. Young, Clerk.

In the Supreme Court of the District of Columbia, Holding an  
Equity Term.

HUTCHINS }  
vs.        }  
MUNN.     } In Equity. No. 23468.

WASHINGTON, D. C.,  
November 21, 1902—10 o'clock a. m.

The COURT: The case of Hutchins against Munn comes before me on a motion to dissolve a restraining order granted in August last at the suit of Stilson Hutchins against the defendants, under which the defendants were restrained and enjoined from continuing the erection of an addition to their dwelling described in the bill, at the corner of Massachusetts avenue and Sixteenth street.

It is admitted that the land the defendants propose to cover by the new building is wholly within their boundary, and had been held by them, and those under whom they claim, from a date beyond 1882, when Mr. Hutchins bought the adjacent lot upon which he in that year, built his residence.

The general rule being that upon land thus circumstanced the owner has a right to build any lawful structure, the complainant must show some tenable objection to the exercise by the defendants of this usual right.

The principal objection presented is that the complainant is entitled to an easement over the land proposed to be thus built on by the defendants, which will be interfered with by the proposed improvement.

This alleged easement is based upon several grounds, which in the bill are set forth as follows:

"4. That subsequent to the purchase of said property about twenty years since, the complainant at great cost erected thereon a dwelling pursuant to a permit issued by the building inspector of the District of Columbia, and upon the faith and in accordance with the building regulations as prescribed by the conditions of said District, and for the purpose of obtaining the necessary light and ventilation, said dwelling was made to conform to the plan and design of the house located on the lot adjoining, now owned by Carrie L. Munn, the wife of the defendant Charles A. Munn, more particularly referred to in paragraph 7 of this bill; that prior to the erection of said dwelling by your complainant it was expressly understood and agreed between complainant and William Windom, the then owner of subplot 141, in square numbered '181, hereinafter referred to, that the area or space for which a permit has now been issued and upon which the defendants are now building the addition hereinafter referred to, should be forever kept free and clear from all buildings, additions to the structures or coverings of any kind or character, in order that the necessary light and ventilation might be preserved to the premises of your complainant and said architect.

"5. That such dwelling was and is still known as No. 1603 Mass. avenue, northwest, Washington, D. C., and consists of the lots above described in paragraph 3, and a building three stories and basement in height occupied and used as a dwelling by the complainant.

"6. That complainant is the owner of said lot and premises and also of the ground included in the part of the street adjoining and abutting on the said lot to the center line of such street, subject only to the public easements hereinafter mentioned, and as such owner of such premises this complainant acquired a free and unobstructed right of way, access and passage to and from said lot and premises over and above the said street and all parts thereof. Together with all the use of the light and air coming in and upon said lot and premises and building, and the right to have doors and windows opening upon the said street and the light and air therefrom free and unobstructed with the right to use said street free from obstruction.

"7. That the said Carrie L. Munn claims to own and is in possession of subplot No. 141 in square 181, in the city of Washington, District of Columbia, said lot being a parallelogram in shape, having a frontage of 60.92 feet or thereabouts on Mass. avenue, northwest, and a depth of 66 feet more or less, being No. 1601 Mass. avenue, northwest, and joins on the east with the property of complainant, which is more particularly referred to in paragraph 3 of this bill.

"8. That a portion of said lot of said Carrie L. Munn has been improved by a three-story basement and brick dwelling house, a portion of the outer lines of which are indicated in Exhibit No. 1 hereto annexed."

The lot of the defendants is situated at the northwest corner of Massachusetts avenue and Sixteenth street. Sixteenth street, at that point, strikes the avenue at an acute angle so that the house does not face exactly on the front of the lot, but rather across it, leaving a part of the land unoccupied. As originally built, and as it was when Mrs. Munn bought it, the house was a compact one, with no wings; and between it and the Hutchins lot, which adjoins it on the west, was a vacant space of ground irregular in shape, which was within the lines of Mrs. Munn's land. The rear of Mrs. Munn's lot at its northwestern corner, comes in contact with the eastern wall of Mr. Hutchins' house, which, for about twenty-eight feet, ran on what may be described as a north and south line between the two houses and was a party wall. At that point the easterly wall of Mr. Hutchins' house deflected from that straight line, and formed two re-entrant angles, one larger than the other; and it then terminated in a large bay window, semicircular in shape, filled with glazed sash, overlooking the vacant land of the Munn lot.

It is alleged by the defendants in the answers, and it seems to me to be supported by the common sense of the matter, that these re-entrant angles must have been contrived by the architect for the very purpose of securing light through the walls to the house, within, in the event that the owner of the adjacent land on the east, whoever he might be, should at any time decide to exercise his right of continuing the party wall straight out to the limits of his boundary. This is a very common and a very defective device for securing light where it is obvious the adjacent land is apt to be built upon up to the boundary line.

The answer of the defendants admit the formal averments contained in the bill as to parties, &c.; and that Mr. and Mrs. Munn are husband and wife, and for many years past have made their home in the premises known as No. 1601 Massachusetts avenue, northwest, but disclaim knowledge of the other matters averred in paragraph 3 of the bill.

Answering paragraph 4 they say they do not know what, if any agreement, was made by the complainant, at the time he erected his said house, with William Windom, a former owner of the lot now owned by defendant Carrie L. Munn, with regard to buildings of any sort thereafter to be erected on the portion of said lot upon

which said defendant is now desirous of erecting an addition to her dwelling-house, but aver they are advised that even if there was such an agreement, which they do not believe, the same is not binding upon these defendants or either of them, for the reason they had no notice or knowledge thereof prior to the filing of the bill in this cause; and assert the said lot was conveyed to defendant Carrie L. Munn by said William Windom in fee-simple, absolutely, as will appear by reference to a copy of the deed filed in this cause, marked "Defendants' Exhibit H and L No. 2," through and by which the defendant Carrie L. Munn acquired title to her said lot; that they are advised that said alleged agreement could in no sense be binding upon them or either of them for the further reasons that it does not appear it was reduced to writing or that any consideration therefor moved from the complainant to the said William Windom, and that, "to the contrary of any such agreement defendant Charles A. Munn says that at the time of the purchase of said lot 141, and during all negotiations connected therewith, he acted for his wife, defendant Carrie L. Munn, and carefully examined the building erected on said lot and the vacant grounds appurtenant to said building in company with said William Windom, then in life and the owner thereof but since deceased; that the defendant Charles A. Munn then noticed the hereinbefore referred to recess windows in the east wall of complainant's house, and also three or four windows in the south wall of the house next adjoining said lot 141 (also erected, as these defendants are informed, by complainant), on the north, all of which overlooked said lot. Calling attention to each and all of these windows, said defendant inquired of said Windom if the lot he was then desirous of selling and afterwards sold to defendant Carrie L. Munn, was in any way obligated to furnish light and air to the adjoining property through said windows, or any of them. In reply to this inquiry said Windom told defendant Charles A. Munn, most positively, that there was no obligation or agreement of any kind resting upon or encumbering said lot 141 which would prevent building upon the entire lot if a purchaser from him, said Windom, so desired. Had there been any restriction upon said lot 141 because of windows looking over it from the house next adjoining on the west and north, these defendants would not have bought said lot or certainly would not have paid the price they did for it. The freedom of said lot from any and all building restrictions entered into and formed a material part of the consideration for its purchase. Wherefore, and for the reasons that the said William Windom, as was well known to the defendant Charles A. Munn, was an upright and honorable man, who had attained high preferments both in his State and in the United States, these defendants say that it is not true that he ever entered into such an agreement as that set up and pretended in said paragraph 4 of the bill."

It is very obvious that these denials in this answer, which is responsive to particular charges in the bill, are entirely at variance with the contentions of the complainant with reference to them. If

it stood alone here I should say, upon the plain principles of equity, that where an injunction has been obtained and a motion is made to avoid it, if the answer swears away the equity in the bill the injunction must be dissolved unless the responses in the answer are sworn away by the testimony of two witnesses, or by one witness with corroborating circumstances, the restraining order in this case should be dissolved, since there are no witnesses at all adduced by the complainant to meet the denials of the answers.

But apart from this consideration the case presented by these sections of the bill do not in themselves support a claim for equitable relief.

Perhaps the shortest way of stating the principle involved will be to read some extracts from the 19th volume of the American and English Encyclopedia of Law, from the article entitled "Light and Air." Of the many excellent articles I have seen in this valuable publication, this seems to be one of the most compact, concise and sententious.

"I. General doctrine as to property in light and air.—In the nature of things there can be no absolute property in light and air. These elements exist everywhere and are free to all, and they cannot be the subject of ownership beyond the moment of actual occupancy. But the right to an uninterrupted access of light and air to one's windows, over and across the land of another, is a well-recognized species of property, constituting an easement in favor of one tenement, known as the dominant tenement, and a servitude in or upon the other or servient tenement. This easement is usually regarded as an incorporeal hereditament, and, like all other easements upon or in land, is an interest in land. An easement of light and air is of the class known as negative easements, for it does not entitle the dominant owner to make any active use of the servient tenement, but is simply a right to restrict the owner of such tenement in the enjoyment of his own land, in that he will not be permitted to build thereon so as to cut off the light and air from the dominant tenement.

II. Acquisition of right to light and air.—1. In general.—A person who builds a house on his own land, having windows overlooking the land of another, or who cuts such windows in walls already constructed, does not thereby acquire an easement of light and air for such windows from and across the adjoining premises, but the owner of the adjoining land may build thereon as he may think fit, notwithstanding he may thereby interfere with the access of light and air to the windows of his neighbor. The right to such an easement may, however, be acquired either by grant or, in some jurisdictions, by prescription."

Then in the notes are cited a number of cases in support of the proposition that there is no such natural right in light and air.

"2. By express grant.—A right to an easement of light and air may be acquired by express grant or contract, and such easement may be created by a reservation in the conveyance of the servient estate in favor of the grantor, such reservation operating as a grant

of the easement. An easement of light and air being an interest in land and an incorporeal hereditament, it can be created only by grant, or by prescription which presumes a grant; it cannot be established by a mere parol agreement. And a grant of such easement must contain all the formal requisities of a grant, and must be certain and definite in its terms."

Attention must be called to the fact that, viewed in the most favorable light, the alleged agreement or understanding between Mr. Hutchins and Mr. Windom must be conceded to be of a very uncertain description. If Mr. Hutchins were to file a bill for specific performance of the alleged contract with Windom, upon the ground of non-performance, the first requirement presenting itself would be that the contract relied upon must be set forth with care and fullness, since it would not be sufficient to allege some contract, but the special contract intended to be relied on must be stated, and such contract must be certain and mutual. Then the proof adduced must be of the identical contract set out in the bill, and must conform to that particular contract, and not to some other contract, however beneficial; and it must, above all, be certain and mutual. But the contract stated in the bill is not certain, but is extremely vague; and there is no ground whatever for saying it is mutual. No feature of mutuality appears, and it is equally void of any supporting consideration. Where was there any possible benefit to Mr. Windom? If he really granted this valuable boon, what was he to get in return? The whole doctrine of the creation of such an easement only applies between people who have privity of estate. If Windom had owned both parcels of the land and had sold one part to Mr. Hutchins, and at the time had clearly made such a contract, and Hutchins had laid out his money in a particular way on the faith of that contract, upon full proof, such a contract, if clear and definite and mutual and supported by a valuable consideration, might have been sustained.

Even in England there was a considerable conflict of authority on the question whether the right to light and air may pass by an implied grant; and as to the question of proof.

According to early English doctrine a prescriptive right to an easement of light and air might be acquired by an uninterrupted enjoyment for 20 years or more; but in the case of ——— vs. ——— it is said that 20 years will not suffice; that there must be at least thirty or forty years of such enjoyment; but this point is now regulated by the statute of William IV.

I quote again from the same article in 19th Encyclopedia:

"In England the prevailing doctrine is that a conveyance of the building, in such case, passes also a right to the light and air, and neither the grantor nor any one claiming under him can afterwards build upon the adjoining land so as to obstruct or interfere with the enjoyment of this right. This is upon the principle that no man can derogate from his own grant."

"The English doctrine has been recognized or adopted to a limited extent in the United States, especially in early cases; but by the

weight of authority it is held that no right of this character can be acquired without an express grant or contract, and a conveyance of land with a building thereon, with all its appurtenances and privileges, will not, without express words so providing, pass to the grantee an easement of light and air over other land of the grantor."

On page 118 it is said :

"The English doctrine of ancient lights, above stated, has not been adopted to any extent in the courts of the United States, which are practically unanimous in holding that no right to light and air can be acquired by prescription or adverse user."

"Two reasons have been assigned for this rejection of the English rule. One is the practical reason that this rule is not considered to be adapted to the existing condition of things in the United States, and could not be applied in rapidly growing communities, without working the most mischievous consequences to property-owners. The other is the theoretical objection that the basis of a prescriptive right to an easement is adverse user, and in the nature of things there can be no adverse user of light or air, for the actual enjoyment of these elements by a property-owner is upon his own land only, and involves no encroachment upon his neighbor's land, nor any interference with the latter's enjoyment of his own property to which he can object. The owner of the adjoining land, therefore, having submitted to no encroachment upon his own rights, cannot be presumed to have assented to any such encroachment."

I will read from the paragraph on "Right to view or prospect" : "The right to light and air does not include the right to a view or prospect, however much this may contribute to the enjoyment of the estate ; and the general rule is that no action may be maintained by one property-owner against another for cutting off his view unless a right of action is given by statute."

Upon the authority of the text books, and of the decisions, there can be no question that the whole doctrine of prescriptive right is gone, or never did exist here.

The decisions in Maryland are in conformity with this. There was *obiter dictum* in 5th H. & J. in the case of *Wright vs. Freeman*, where Judge Dorsey in delivering an opinion with reference to the right to a road by prescription illustrated a point in his argument by referring to the doctrine of ancient lights ; but the illustration had nothing to do with the case in hand, and it was expressly repudiated in 11th Maryland, page 1, by Judge Eccleston who declares the statement is not to be taken as authority.

The recent case of *Garrett vs. Janes*, 65th Maryland, page 260, was argued with great ability. Mr. Garrett had a very costly house on Monument square in Baltimore, and he built a large portico out on the street two stories in height and very cumbersome. It cut off from his next-door neighbor the view down the street, shaded him and barricaded his light ; but being within the nine-feet limit allowed by the permit the court of appeals decided it was not such an obstruction as could be enjoined. I will read from the opinion on page 271.

"This porch being, therefore, in its extent from the building line,

and in its ornamental effect a lawful structure, it follows that the plaintiff, even if some measure of obstruction to his light or other injury is consequent upon its erection is not entitled to relief; such damage is *damnum absque injuria*.

"The inconvenience suffered is the incident to residing in a city, where houses are necessarily close together, and the legitimate use of his property by a neighbor will unavoidably often cause discomfort, and where he in turn will suffer inconvenience from the same cause.

"It often occurs that it would be more agreeable if next door there were not a tree, or an awning or a signboard to obstruct the light; but where such obstructions rightfully exist, they afford no ground for legal redress.

"As to any interruption of the plaintiff's facilities of outlook in the sense of view merely, it has been long ago decided that for mere interference with prospect, it not being an incident of the estate, no remedy lies apart from contract."

It is clear, therefore, the complainant can have no support for his contention upon the ground of any prescription; and that he has neither set forth nor established any facts showing or tending to show a grant or anything of the nature of a grant supporting his claim which can authorize him to prevent the defendants from using their own land in the manner proposed.

But the complainant further insists that the injunction should be continued because of sundry irregularities connected with the construction and building; which are fatal to their right to proceed with the work.

It is contended that no right to commence the building existed because the permit was not issued to the owner of the lot, but to C. A. Munn, the husband of the owner; and that Mrs. Munn did not sign the application. It is true the owner, Mrs. Munn, who was then in Europe, did not sign the application, and that it was signed, in her behalf, by C. A. Munn, her husband, who lives with her on the property. But the object of the requirement requiring the signing of an application was fulfilled by the signature of the husband as her agent; which secured a responsible guarantee that the application was made in good faith, at the desire of the owner and by her authority. The requirement of this part of the regulation, though conceived in the direction of regularity, cannot be regarded as mandatory, in the sense that such non-compliance with the regulation could invalidate the permit.

The law on that subject I understand to be this:

A provision in a statute or rule of procedure or the like, is said to be directory when it is considered as a mere direction or instruction of no obligatory force, and involving no invalidating consequence for the disregard, as opposed to an imperative or mandatory provision which must be followed. The general rule is that the prescriptions of a statute relating to the performance of a public duty are so far binding that, though neglect of them may be punishable, yet it does not affect the validity of the acts done under them,

as in the case of a statute requiring an officer to prepare and deliver a document to another officer on or before a certain day. If the provision is such that disregard of it will constitute an irregularity, but one not necessarily fatal, it is said to be directory.

Counsel for the defendant- have stated that such an irregularity in signing the application is not uncommon, and that it has been constantly neglected and overlooked by the authorities. I should say that there was certainly some truth in that statement, since I find in this case a copy of the proceedings respecting this permit which was granted to Mr. Hutchins himself in 1882, which is referred to in this bill and is filed as an exhibit in the cause. It contains an application for a permit granted on October 28th, 1882, to Stilson Hutchins to build the house in which he has ever since lived. In the application he describes the property and the character of the proposed house, and says his architect is C. H. Read, Jr., and it is signed C. H. Read, Jr., for Stilson Hutchins, and not by Mr. Hutchins himself. There was no privity between them at all. He was merely the architect; and yet upon his signature of the application the permit was granted; the house was built and there it now stands. If I am to decide Mrs. Munn's new wall should be abated because of the irregularity, it would follow that Mr. Hutchins' entire house might come down for the same reason.

Under the circumstances surrounding both buildings, the ruling of the Supreme Court in the case of *Denaise vs. Cook*, 91 U. S. 583, would seem to dispose of this objection. In that case the inspector of buildings, Mr. Cluss, after an examination of the plans of the proposed building, issued a permit to build. After Denaise had progressed to a considerable extent with his building, the same inspector notified him to take it down. On a bill for an injunction, the Supreme Court held that if the proper officer, on examination of the contract, gave a permit for the erection of such buildings as it contemplated, "the other side should make a clear case of departure from the permit or danger to the public interests, before the owner should be arrested midway in the construction of the buildings, and have them torn down."

Here no departure from the permit is alleged or shown. Would it have been just to have interfered with Mr. Hutchins in his building after he had progressed with it as far as these defendants have progressed, upon the ground that his application was not signed by himself but by one of his employés?

Next, it is objected that as there has been one construction of a party wall between these buildings, the right to extend it no longer exists, but has been exhausted. Mr. Hutchins commenced building his house at the northern boundary of his line and built it 28 feet in a southerly direction as a party wall, on the line between the two lots. Mrs. Munn, some years ago, and after her purchase from Mr. Windom, determined to place a billiard-room and a conservatory on the northern part of the vacant space belonging to her adjoining Hutchins' lot, and she did so. The addition was built upon the

party wall previously erected by Mr. Hutchins, who having the right to demand payment for his share of the party wall, received it from Mrs. Munn. Under these circumstances it is insisted by Hutchins that from that day forth all right on the part of either party to extend that party wall has gone. In my opinion this contention is wholly untenable.

There is no evidence in the case as to what the length of the conservatory was; but suppose Mrs. Munn, instead of building the conservatory, had built a little pantry only some ten feet in length along her line of possibly an hundred feet. Is it possible the fact that she availed herself of the party wall for that short distance estopped her from the use of any more of that party wall? Or that Mr. Hutchins has forfeited all right to carry his building up to the southern limit of his land, because he erected his house along a portion of that line?

We must give these regulations a useful and sensible construction, and not a fastidious one, like that.

The learned counsel referred to a case from one of the northern States, in which a decision was made that there could be, in such a case, no further extension of the wall. But that case only applied to an attempt to encroach further upon adjoining land, because the first builder wanted to erect a new building requiring a much thicker wall. I can see some sense in that. A man is going to build, and the lot next to his is vacant. He claims from the proprietor of the next lot the privilege of a party wall, which he proposes to build eighteen inches wide, and he claims and takes nine inches of the vacant land. The adjoining owner builds his house using the nine inches of the party wall, and is living there with his family. The decision under the regulation in force in that city held, substantially, as I understood it, when read in the argument, that the original builder of the party wall, had not the right to impose upon the dwellings of the last builder a further incumbrance of a thick wall, injurious to the other holder, which might involve the necessity of taking down the existing wall and of paying for the putting up of a wall, for example, for an enormous fourteen-story house, requiring a wall three feet thick. In such a case the courts might very well have so held; but it could not result that because one party had seen fit to use, in a reasonable way, a small part of the depth of his lot, he can never afterwards lengthen it along the additional part of his lot. I have no idea that any such irrational construction could be placed upon our law. Mr. Hutchins has now the right to extend his building within the law, and Mrs. Munn had the right to extend hers in the manner she proposes; and neither one can be estopped by the previous partial use.

It is objected also that the building of the new improvement interferes with the reservation of ten per cent. vacant land required by the regulations to be unoccupied upon defendants' premises, for air and light.

I am at a loss to understand what Mr. Hutchins has to do with this matter. Is he afraid that Mr. and Mrs. Munn, by building that

wall, are going to stifle themselves? So that he should step in and gallantly try to save them from themselves?

There can be no doubt about there being sufficient light and air in a house fronting as Mrs. Munn's does, on one side on Sixteenth street, one of the widest numbered streets in the city, and on the other on Massachusetts avenue, one of the widest avenues, to say nothing of all the generous public squares around there.

Besides, if this lady should build over every square inch of the land which belongs to her, and on which she has been paying taxes, and which this injunction would confiscate, not for the benefit of the public but for the benefit of Mr. Hutchins alone, there would be no violation of the building regulations.

For although section 33 of the regulations declares, that with respect to ordinary buildings, there shall be a reservation on the lot of at least ten per cent.; yet it makes an exception with respect to corner lots, by declaring that "angular corner lots abutting lots that extend from street to street may be excluded from the above restrictions."

Two classes of lots are spoken of: first, "angular corner lots," and second, "abutting lots which extend from street to street." It does not mean to describe only one kind of lot.

Before the building of the present improvement the regulation was amended in this way: "Acute-angle corner lots, abutting lots that extend from street to street, or from a street to a public alley at least ten feet wide or where sufficient facilities for light and ventilation are provided to the satisfaction of the Commissioners, may be excluded from the above restrictions."

Then the Commissioners went further, and corrected it afterwards by striking out the words "acute angle."

It is insisted the Commissioners had no right to change these regulations from time to time. I do not so understand it. The law expressly says they shall make such changes, from time to time, as the public interest shall require; and they constantly do so, and ought sometimes to do so. Occasions may arise which make it indispensable that they should not be bound by an immutable rule, and they had the right to make those changes which exclude this lot from the operation of regulation No. 33 in that particular.

Besides, the permit shows that sufficient light and ventilation were provided, *to the satisfaction of the Commissioners*; for they had no right to issue it until the Commissioners saw to it that sufficient light and air were provided for; and, furthermore, this is not a matter of concern to Mr. Hutchins, as I have already said.

If the new building of Mrs. Munn, will reduce the percentage of Mr. Hutchins' land required to be left unbuilt on by him, it shows he must have erred in this respect when he built his house; for the defendant does not propose to encroach on the Hutchins land, except to the extent of the half of the party wall.

I think, on the whole, the answer effectually swears away the equity of this bill.

Criticism is made as to the form of the motion to dissolve. It may well be that in some jurisdictions there would have been required more formality in disclosing the points upon which the motion to dissolve was to be argued; but that is not the practice here.

Again, criticism is made upon the form of the answers. We have a rule which says that there shall be no demurrer to an answer, but that objection is to be made by exceptions, which must be made by a certain time, and if they are not made within that limit, they are to be considered as waived and the points cannot be availed of.

Besides, the answers of Hill and Lipscomb, and of Mr. Munn, are sworn to, and the injunction went against them also.

The principle that where an agreement is executed it is immaterial whether it is in writing or not, cannot apply here. That principle is entirely apart from the matter we have before us.

If there was any informality in the application for this permit it is all done and ended; but after the permit was issued an appeal was made to the Commissioners in behalf of Mr. Hutchins to revoke it, and they refused, and thereby ratified it in all respects, after a hearing.

It is objected, in behalf of the defendants, that this complainant has a full remedy at law. I do not think he has any remedy anywhere, for what he complains of in this bill. His supposed discomfort, if any really exists, is *damnum absque injuria*.

I am of the opinion the rule should be discharged, and I will sign an order to that effect.

A. B. HAGNER.

### Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } ss:  
*District of Columbia,*

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify that the foregoing is a true and correct copy of the opinion of Mr. Justice Hagner, filed February 17, 1903, in cause No. 23,468, equity, wherein Stilson Hutchins is complainant, and Carrie L. Munn, *et al.*, are defendants, as the same remains upon the files and of record in said court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 24<sup>th</sup> day of March, A. D. 1903.

Seal Supreme Court  
of the District of  
Columbia.

JOHN R. YOUNG, *Clerk.*

STILSON HUTCHINS, Appellant,  
v.  
CHARLES A. MUNN ET AL., Appellees. } No. 1274.

It is hereby stipulated that the foregoing opinion may be filed and made a part of the record herein.

BRANDENBURG & BRANDENBURG,  
*Att'ys for Appellant.*

SAM'L MADDUX,  
H. PRESCOTT GATLEY,  
*Att'ys for Appellees.*

**M'ch 31, 1903.**

[Endorsed:] No. 1274. Stilson Hutchins, appellant, *vs.* Charles A. Munn *et al.* Addition to record per stipulation of counsel. Court of Appeals, District of Columbia. Filed Mar. 31, 1903. Robert Willett, clerk.